

Message Text

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ACTION EUR-12

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FM USMISSION USBERLIN

TO SECSTATE WASHDC 1654

AMEMBASSY BONN

INFO AMEMBASSY BERLIN

USMISSION GENEVA

AMEMBASSY LONDON

AMEMBASSY MOSCOW

USMISSION NATO

AMEMBASSY PARIS

C O N F I D E N T I A L SECTION 1 OF 2 USBERLIN 2280

E.O. 11652: GDS

TAGS: PGOV, PFOR, WB, GW, UR

SUBJECT: FRG DEMARCHE ON EXTENSION OF(BWC)

BIOLOGICAL WEAPONS CONVENTION TO BERLIN

REF: (A) BONN 18065; (B) BONN 17507(NOTAL);

(C) PARIS 28975

1. SUMMARY: WE APPRECIATE FRG CONCERNS BUT CONTINUE
TO FEEL THAT, ON BALANCE, WE SHOULD NOT PERMIT
EXTENSION OF BWC TO BERLIN. WE WOULD FAVOR WORKING
WITH GERMANS TO DEVELOP ADEQUATE MEANS OF PROVIDING
ASSURANCE THAT BERLIN SCIENTIFIC INSTITUTIONS SHOULD
NOT BE DISADVANTAGED, PERHAPS THROUGH DEVICE OF A
LETTER FROM ALLIES NOTING THAT BERLIN ALREADY HAS
ALLIED LEGISLATION VIRTUALLY IDENTICAL TO TREATY. WE
WOULD BE RELUCTANT, HOWEVER, TO CALL INTO QUESTION
INTEGRITY OF "ESTABLISHED PROCEDURES" PURSUANT TO
WHICH ALLIES REVIEW FRG TREATIES AND LEGISLATION AND
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TAKE NECESSARY ACTIONS TO MAINTAIN THEIR RIGHTS

AND FULFILL THEIR RESPONSIBILITIES. WE ARE FEARFUL THAT THIS WOULD BE INEVITABLE RESULT WERE WE TO YIELD TO FRG POLITICAL PRESSURES IN MATTER WHERE WE BASICALLY AGREE THAT SOVIETS WOULD BE CORRECT IN ASSERTING THAT TREATY SHOULD NOT BE EXTENDED. WE SEE REAL VALUE, ON OTHER HAND, IN BEING ABLE TO DEMONSTRATE TO SOVIETS THAT WE CALL SHOTS AS WE SEE THEM IN BERLIN AND DO NOT SIMPLY PROVIDE RUBBER STAMP FOR FRG. WE ALSO ARE A BIT TROUBLED BY FRG THREAT TO DROP OUT OF BUSINESS OF NEGOTIATING DISARMAMENT AND ARMS CONTROL AGREEMENTS UNLESS THEY CAN REPRESENT BERLIN IN SUCH NEGOTIATIONS. SOVIETS WOULD NO DOUBT VIEW THIS SORT OF THING AS CONFIRMATION OF THEIR WORST SUSPICIONS THAT FRG IS STRAINING AT EDGES OF QA. IN LONG RUN THIS COULD PROVOKE MORE BASIC DIFFICULTIES FOR OUR POSITION IN CITY THAN WE BELIEVE WE WOULD EXPERIENCE BY MAINTAINING OUR POSITION IN FACE OF SOME FRG DOMESTIC POLITICAL PRESSURES. END SUMMARY.

2. ORDINARILY OF COURSE WE WOULD WISH WHEREVER POSSIBLE TO ENCOURAGE DEVELOPMENT OF BERLIN-FRG TIES AND STRICT FRG-BERLIN LEGAL UNITY, AND WE WOULD EXPECT THAT ANY DOMESTIC FRG POLITICAL REACTION TO NON-EXTENSION OF BWC WOULD BE REFLECTED IN BERLIN POLITICAL SCENE AS WELL. IN THIS INSTANCE, HOWEVER, WE FEEL THAT THERE ARE MORE IMPORTANT COUNTERVAILING CONSIDERATIONS. TO BEGIN WITH, THERE IS BASIC FACT THAT WE HAVE CONSIDERED ISSUE CAREFULLY OVER PERIOD OF TWO YEARS AND, ALONG WITH FRENCH, HAVE CONCLUDED THAT LEGALLY THIS AGREEMENT SHOULD NOT BE EXTENDED TO BERLIN. THIS IS NOT SIMPLE LEGALISM, WHICH MIGHT BE IGNORED BECAUSE OF POLITICAL OR PRACTICAL ARGUMENTS. THERE HAVE BEEN AND WILL CONTINUE TO BE MANY INSTANCES IN WHICH WE WILL CONCLUDE THAT GIVEN LAW OR TREATY SHOULD BE ADOPTED IN OR EXTENDED TO BERLIN DESPITE SOVIET OPPOSITION. KEY ELEMENT OF OUR DEFENSE TO SOVIET PROTESTS IS THAT QA PERMITS SUCH ACTION PURSUANT TO "ESTABLISHED PROCEDURES" WHICH INVOLVE ALLIED REVIEW TO ENSURE THAT SECURITY AND

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STATUS OF BERLIN NOT AFFECTED. WE CAN NEVER EXPECT THAT SOVIETS WILL ACCEPT FULLY THAT IT IS SUFFICIENT FOR ALLIED KOMMANDATURA TO GO THROUGH THESE ESTABLISHED PROCEDURES AND THAT THEY DO NOT HAVE EQUAL ROLE IN DETERMINING WHAT IS PROPER AND WHAT IS NOT. WE MUST ACCEPT, HOWEVER, THAT SOVIETS ARE HONEST BY THEIR LIGHTS IN THEIR CONCERN FOR MAINTENANCE OF QA BALANCE. THERE IS REAL UTILITY, THEREFORE, IN

DEMONSTRATING WHERE WE THINK THERE IS OVERWHELMING
LEGAL CASE THAT OUR REVIEW IS MEANINGFUL AND THAT WE
TAKE EXERCISE OF OUR RESERVED RESPONSIBILITIES AS
SERIOUSLY VIS-A-VIS GERMANS AS WE DO VIS-A-VIS
SOVIETS. IF TO CONTRARY, WE APPEAR TO BE BASING
OUR DECISIONS ON WHERE MOST SHORT TERM POLITICAL
PRESSURE IS GOING TO COME FROM, WE WILL BE RUNNING
RISK THAT SOVIETS WILL CONCLUDE THAT ONLY WAY WE
WILL PAY EVEN MINIMUM ATTENTION TO THEIR CONCERNS
IS IF THEY INCREASE THEIR PRESSURE. THIS WOULD BE
PRESCRIPTION FOR ESCALATION OF HITHERTO RATHER
GENTLEMANLY DISPUTES ABOUT GREY AREAS OF QA IN WAY
NOT HELPFUL TO EITHER OUR OR FRG'S REAL INTERESTS
IN BERLIN.

3. WE ARE OF COURSE NOT EAGER TO SEE BWC TURNED
INTO POLITICAL FOOTBALL. WE CANNOT HELP BUT FEEL,
HOWEVER, THAT NON-EXTENSION IS A MANAGEABLE ISSUE
IF FRG IS PREPARED TO BE FORTHCOMING. TO BEGIN WITH,
"PRACTICAL DIFFICULTIES" WHICH FRG PROFESSES TO SEE
IN NON-EXTENSION ARE NOT PERSUASIVE, AT LEAST AS
THUS FAR PRESENTED. IT IS HIGHLY UNREALISTIC TO ARGUE
THAT SOVIETS AND OTHER EAST EUROPEANS WILL NOT
COOPERATE WITH BERLIN SCIENTIFIC INSTITUTIONS BECAUSE
THEY ARE NOT BOUND BY BWC. TO CONTRARY, WE WOULD
THINK NON-COOPERATION IS MUCH MORE LIKELY IF SOVIETS
ARE OFFERED EXCUSE THAT FRG HAS MADE WHAT THEY WOULD
SURELY CONSIDER TO BE AN ILLEGAL EFFORT TO EXTEND
TREATY TO BERLIN. IF SOVIETS WISH TO COOPERATE WITH
BERLIN SCIENTIFIC INSTITUTIONS IN THIS AREA,
THEY ARE MORE LIKELY TO DO SO IF SAFEGUARDS
ARE PROVIDED BY ALLIED LEGISLATION LONG IN FORCE THAN
IF THEY ARE IN ANY WAY CONSIDERED TO FLOW FROM FRG
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RATIFICATION OF BWC. WE WOULD FAVOR, HOWEVER,
EFFORT BY ALLIES TO PROVIDE FRG ASSURANCES, PERHAPS
THROUGH LETTER FROM THREE EMBASSIES, THAT BERLIN

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ACTION EUR-12

INFO OCT-01 IO-10 ISO-00 CIAE-00 DODE-00 PM-04 H-02 INR-07

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C O N F I D E N T I A L SECTION 2 OF 2 USBERLIN 2280

SHOULD NOT BE DISADVANTAGED IN PEACEFUL USES SINCE
IT HAS LONG BEEN SUBJECT TO ESSENTIALLY
IDENTICAL ALLIED LEGISLATION. WE MIGHT PROVIDE
FURTHER ASSURANCE THAT ALLIED KOMMANDATURA WILL SEEK
TO REVIEW FAVORABLY ANY FRG LAWS OR REGULATIONS IN-
TENDED TO IMPLEMENT PRACTICAL MEASURES RELATED TO BWC.
WE WOULD ASSUME THAT THROUGH ONE MEANS OR ANOTHER IT
WILL BE POSSIBLE TO ENSURE THAT BERLIN SCIENTIFIC
INSTITUTIONS WILL END UP SUBJECT TO IDENTICAL CONTROLS
AND PROCEDURES AS THEIR EQUIVALENTS IN FRG. THERE
IS NOT LIKELY, THEREFORE, TO BE ANY MEANINGFUL BREAK
IN "LEGAL UNITY" BETWEEN BERLIN AND FRG EXCEPT IN
NARROW SENSE THAT FUNDAMENTAL RESTRICTIONS WOULD BE
IMPOSED IN FORM BY ALLIED LEGISLATION AND IN LATTER
BY BWC.

4. NON-EXTENSION OF BWC WOULD ALSO NOT REALLY BREAK
NEW GROUND. IT IS TRUE THAT SEVERAL PREVIOUS
DISARMAMENT AND ARMS CONTROL TREATIES HAVE BEEN
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EXTENDED TO BERLIN. EACH IS, HOWEVER, AS EARLIER
US REVIEW CONCLUDED, VERY DISTINCT FROM BWC. MAY
1955 ALLIED DECLARATION ON BERLIN SPECIFICALLY SETS
FORTH "DISARMAMENT AND DEMILITARIZATION, INCLUDING
RELATED FIELDS OF SCIENTIFIC RESEARCH", AS ONE OF
FEW AREAS IN WHICH ALLIES WILL CONTINUE TO EXERCISE

THEIR POWERS IN CITY. IT CAN REASONABLY BE CONCLUDED FROM THIS THAT IT IS PERFECTLY NORMAL FOR ALLIES TO RESTRICT FRG RIGHT TO REPRESENT BERLIN IN AGREEMENTS OF THIS SORT UNLESS THERRE ARE STRONG REASONS TO CONTRARY. IF FRG IS PREPARED SO TO VIEW SITUATION, WE WOULD THINK IT WOULD NOT BE TOO DIFFICULT TO RELY ON 1955 DECLARATION AS BASES FOR ANY DEFENSE AGAINST DOMESTIC POLITICAL CHARGES THAT ALLIES OR FRG WERE GIVING AWAY AN ELEMENT OF BERLIN-FRG TIES UNDER SOVIET PRESSURE. AS RELATED PRECEDENT, ALLIES AND FRG COULD NOT THAT IT IS COMMON FOR FRG NOT TO SEEK TO EXTEND TO BERLIN TREATIES IN OTHER AREAS SPECIFICALLY RESERVED TO ALLIES UNDER 1955 DECLARATION. THUS, IN ADDITION TO NATO AND RELATED AGREEMENTS, FRG HAS NOT SOUGHT TO EXTEND ANY OF ITS CIVIL AVIATION AGREEMENTS, EITHER BILATERAL OR MULTILATERAL, TO BERLIN, AND ALLIES AS RECENTLY AS FEW YEARS AGO RECONFIRMED THEIR 1963 DECISION NOT TO PERMIT EXTENSION TO CITY OF EUROPEAN SPACE RESEARCH ORGANIZATION (ESRO) TREATY.

5. IF DEPARTMENT'S JUDGMENT IS THAT WE WOULD NONE-THELESS CONCUR IN FRG DEMARCHE, WE WOULD AGREE WITH EMBASSY THAT BERLIN CLAUSE AND BK/L SIMILAR TO THOSE USED WITH NPT WOULD BE PREFERABLE METHOD OF EXTENSION. LIKE EMBASSY WE WOULD BE TROUBLED BY FORMULA THAT IN EFFECT LIMITED EXTENSION TO SINGLE PEACEFUL USES ARTICLE. WE WOULD BE LESS CONCERNED THAT THIS MIGHT INITIATE NEW PRACTICE OF REVIEWING EACH TREATY TO DETERMINE PRECISELY WHICH ELEMENTS ARE ACCEPTABLE AND WHICH NOT. WE HAVE IN EFFECT BEEN DOING THIS ALL ALONG AND HAVE IN PAST APPROVED TREATY WITH EXCEPTION OF SINGLE ARTICLE WHICH HAD SOMETHING INAPPROPRIATE IN IT. MOST RECENT CASE WAS MOLECULAR BIOLOGY LABORATORY AGREEMENT WHICH WAS CONFIDENTIAL

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SUBJECT OF SOVIET PROTEST LAST SPRING . AS WILL BE RECALLED, AK EVENTUALLY ISSUED BK/O APPROVING EXTENSION BUT DEPRIVING OF FORCE IN BERLIN SINGLE ARTICLE WHICH PERMITTED FRG TO TAKE WHATEVER ACTIONS IT DEEMED NECESSARY FOR ITS INTERNAL SECURITY. DIFFICULTY WITH SUCH A SELECTIVE APPROACH TO BWC, HOWEVER, WOULD BE THAT IT WOULD HIGHLIGHT NATURE OF THIS AGREEMENT. IN EFFECT WE WOULD BE DEMONSTRATING THAT WE OBJECTED TO DOG BUT APPROVED OF TAIL INSTEAD OF MORE NORMAL REVERSE PROCEDURE.

6. THERE IS, OF COURSE, THIRD OPTION OF APPEARING TO GO ALONG WITH FRG WHILE RELYING UPON FRENCH TO

VETO PROJECT. WE WOULD SHARE SOME OF EMB PARIS' DISCOMFORT OVER SUCH A TACTIC, HOWEVER. WE OEW TO OUR ALLIES IN KOMMANDATURA OUR OWN BEST EFFORTS TO WORK AT LEAST AS SQUARELY WITH THEM IN BERLIN MATTERS AS WITH FRG.

7. WE WOULD ALSO VENTURE ONE COMMENT ON GENERAL DISARMAMENT AND ARMS CONTROL MATTERS. FRG THREAT THAT IT MIGHT NOT BE ABLE TO ENTER INTO FUTURE TREATIES IN THIS AREA IF IT COULD NOT EXTEND THEM TO BERLIN WOULD BE UNDOUBTED SETBACK TO MAJOR ASPECT FO OUR WORLDWIDE POLICY IF IT WERE SERIOUSLY MEANT. WE SHARE EMBASSY'S SKEPTICISM, HOWEVER, THAT FRG WOULD TRULY FOLLOW THROUGH ON SUCH A DRASTIC STEP, WHICH WOULD LEAVE FRG OPEN TO CHARGES OF BAD FAITH BY BOTH USSR AND GDR.

8. WE HOPE THEREFORE THAT EFFECT OF NON-EXTENSION COULD BE SOFTENED BY MEANS OF ALLIED ASSURANCES ON NON-DISADVANTAGE OF BERLIN SCIENTIFIC INSTITUTIONS AS WELL AS BY PROMISE TO REVIEW ON MERITS IMPLEMENTING LAWS AND REGULATIONS RELATED TO BWC AND FUTURE DISARMAMENT AND ARMS CONTROL AGREEMENTS TO SEE WHAT CAN BE EXTENDED TO OR ADOPTED IN BERLIN. WE CONTINUE TO BELIEVE, HOWEVER, THAT LONG RANGE BENEFIT OF MAINTAINING VIS-A-VIS SOVIETS INTEGRITY OFHESTABLISHED PROCEDURES ON WHICH SOM MUCH OF QA BASED OUTWEIGHTS RISK OF FRG DOMESTIC POLITICAL REACTION.
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